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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,093	01/22/2002	Linh M. Bui	HO-P02206US0	3598
26271 7590 02/12/2008 FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095				
EXAMINER				
VU, JAKE MINH				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
02/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/054,093

Applicant(s)

BUI ET AL.

Examiner

JAKE M. VU

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-12, 17, 58 and 60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 17, 58 and 60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of Applicant's Amendment and Request for Continued Examination filed on 10/29/2007.

- Claims 1, 10, 58 and 60 have been amended.
- Claim 59 has been cancelled.
- Claims 1-3, 8-12, 17, 58 and 60 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/2007 has been entered.

Double Patenting

Claims 1-3, 8-12, 17, 58 and 60 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/264,886 and 10/891,895 **are maintained** for reasons of record filed on 02/10/2006 in the previous office action.

Note, it is acknowledged that Applicant request that this rejection be held in abeyance until the conflicting claims are in fact patented.

Claim Rejections - 35 USC § 112

Claims 58 and 60 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement **are withdrawn** in view of Applicant's Amendment.

However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection.

Claims 1 and 10 recite the newly amended limitation of "50 to about 70%"; however, the specification as-filed does not provide a written description or set forth the metes and bounds of this phrase. The specification only disclosed "about 35% to about 70%" and "50%". The instant claims now recite limitations which were not clearly disclosed in the specification as-filed and now change the scope of the instant disclosure as-filed. Such limitations recited in the present claims, introduce new

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concepts and thus violate the written description requirement of the first paragraph of 35 U.S.C. §112.

Applicant is required to cancel the new matter in the response to this Office action. Alternatively, Applicant is invited to identify sufficient written support in the original specification for the "limitations" indicated above.

Claim Rejections - 35 USC § 103

Claims 1-3, 8-12, 17,58 and 60 rejected under 35 U.S.C. 103(a) as being unpatentable over REMMEREIT (US 6,042,869) in view of HAND et al (US 5,431,927) and HANNAH et al (*Increased dietary protein spares lean body mass during weight loss in dogs*. Journal of Veterinary Internal Medicine. 1998:12. pg. 224) **are withdrawn** in view of Applicant's amendment.

However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over REMMEREIT (US 6,042,869) in view of HAND et al (US 5,431,927),

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HANNAH et al (Increased dietary protein spares lean body mass during weight loss in dogs. Journal of Veterinary Internal Medicine. 1998:12. pg. 224) and SUNVOLD (US 6,071,544).

Applicant's claims are directed to a process for producing a pet food product comprising the steps of adding: 50-70% of protein; 4-10% of fat; 5-25% of fiber; 10-35% of carbohydrate; and 0.1-1% of a functional ingredient, such as conjugated linoleic acid. Wherein, the fat comprises of essential long-chain fatty acids and the composition is a dry or semi-moist pet food.

REMMEREIT disclosed a dry or semi-moist dog food comprised of functional ingredients, such as 0.1-2.5% of conjugated linoleic acid (see col. 14, line 1-50; col. 3, line 22-35; and abstract) and linoleic acid (see col. 3, line 28), which is an essential long-chain fatty acid. REMMEREIT further disclosed that the addition of conjugated linoleic acid in pet food increases the lean to fat ratio, effectively reducing body fat, and increases feed conversion efficiency in animals (see col. 1, line 55-64). REMMEREIT disclosed the dog food further contain meat, soy, animal fat, and wheat, which are protein, fiber, fat, and carbohydrate (see col. 14, line 1-49).

However, REMMEREIT does not disclose the actual percentage of the protein, fat, fiber, and carbohydrate in the dog food.

HAND disclosed a typical pet food (see col. 8, line 32) product comprised of: 10-35% of protein; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate, which are within Applicant's ranges except for protein.

HANNAH disclosed a high protein diet, such as 45% protein, would spare lean body mass during weight loss when compared to a lower dietary protein diet, such as 35%. Additional disclosure includes: the percent of fat loss increases with the increase of dietary protein intake (see Table).

SUNVOLD disclosed a dietary composition for promoting healthy weight loss in cats wherein the composition comprised 28-50% of protein.

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate the ranges of 50% of protein or more; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate into REMMEREIT's dog food composition. The person of ordinary skill in the art would have been motivated to make those modifications, because these percentages are typical ranges in pet food and a high protein diet would increase the lean to fat ratio that REMMEREIT was seeking, and reasonably would have expected success because REMMEREIT disclosed dog food that contain protein, fat, fiber, carbohydrate, and conjugated linoleic acid.

Note, it would have been obvious for the person of ordinary skill in the art to use higher percentage of protein in the dietary composition, since HANNAH disclosed the percent of fat loss increases with the increase of dietary protein intake.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-

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8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/

Jake M. Vu, PharmD, JD
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